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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BARTOSIK, ANTHONY N

ART UNIT	PAPER NUMBER
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3609

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07/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/807,946	Applicant(s) KORMAN ET AL.	
	Examiner Anthony N. Bartosik	Art Unit 3609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>October 5, 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14, drawn to invention I, classified in class 52, subclass 607.
 - II. Claims 15-20, drawn to invention II, classified in class 426, subclass 658.
2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make another and materially different product. Here the process of making lacks the requirement that the building block be rectangular or that the walls contain a higher density (claim 1). Additionally, process does not require that the moisture content be less than or equal to about 14%. The process as claimed could be used to make a feed block for animals.
3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with James M. McPherson on June 25, 2007 a provisional election was made with traverse to prosecute the invention of the building blocks, claims 1-14. Affirmation of this election must be made by applicant in replying to

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this Office action. Claims 15-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

1. Claim 7 is objected to because of the following informalities: Claim 7 includes an error and appears to be incomplete. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 4, 5, 7, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hewlett (US 1,604,097).**

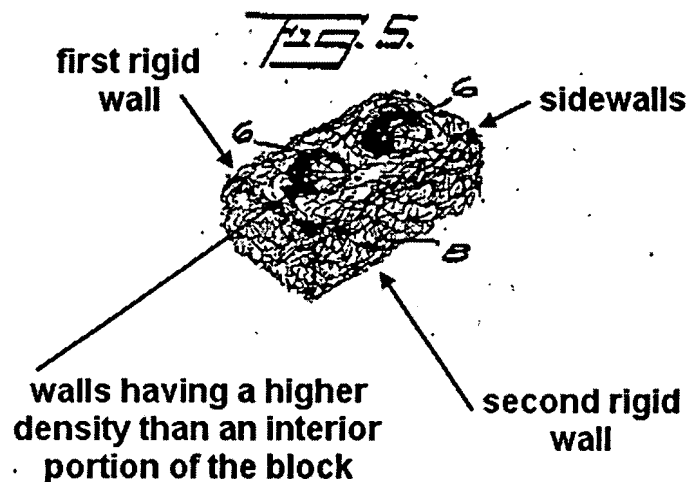
3. In Re claim 1, Figure 2 and 5 of Hewlett discloses a plurality of straw stalks having natural occurring binding agents processed to form a generally rectangular block

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for building, wherein the block includes a first rigid wall, a second rigid wall opposite of the first rigid wall, and one or more sidewalls connecting the first and second walls the walls having a higher density than an interior portion of the block. Examiner notes that the holes in the block, as shown below, result in the walls having a higher density than the interior portion, the interior portion being the holes.

4. In Re claim 4, Figure 2 of Hewlett discloses first and second walls that are generally planar.

5. In Re claim 5, Figure 3 of Hewlett discloses sidewalls that are generally planar and orthogonal to the first and second walls to form crisp edges.



6. In Re claim 7, Column 2 Lines 57-63 of Hewlett disclose an added binder in contact with the straw stalks and.

7. In Re claim 8, Column 2 Lines 85-96 of Hewlett discloses a moisture inhibitor in contact with the straw stalks.

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8. In Re claim 10, Figure 2 and 5 of Hewlett discloses a block further including one or more through-holes (6) extending between the one or more sidewalls and adapted to receive an elongated member therethrough.

9. **Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipate by the <http://www.eren.doe.gov/buildings/documents/strawbale.html>as, (hereafter “Webpage”).** Webpage discloses a plurality of rice straw stalks having a moisture content of less than or equal to about 14%, a binder agent, a first rigid planer wall, a second rigid planar wall opposite of the first rigid planar wall, and planar sidewalls as well as a restraining device. Additionally, the process limitations “compressed to form” and “application of heat and pressure and cooling thereafter” of claim 11 are considered to be a process limitations, and as such it has been held that even though product-by-process claims are limited by and defined by the process; determination of patentability is based on the product itself. Furthermore, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art was made by a different process. *In re Thrope*, 227 USPQ 964, 966 (Fed. Cir. 1985). (see MPEP 2113).



Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

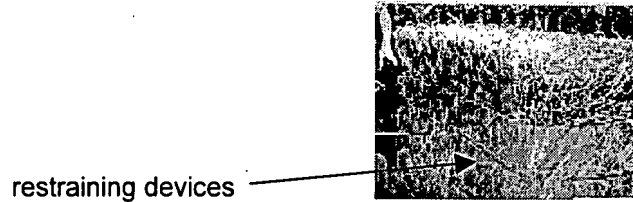
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 2, 3, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hewlett (US 1,604,097) in view of Webpage.**

12. In Re claim 2, Hewlett teaches the use of straw blocks but is silent as to what type of straw. How to Buy a Bale section of the Webpage teaches straw stalks that are rice straw stalks and where the block is substantially free of any added binding agent. It would have been obvious to one skilled in the art at the time of the invention to substitute the straw as taught by Hewlett with rice straw as taught by the Webpage in order to use a cheap and plentiful source for construction materials.

13. In Re claim 3, Hewlett teaches the use of straw blocks but is silent as to the moisture content. How to Buy a Bale section of the Webpage teaches straw stalks having predetermined moisture content of approximately 14% or less.

14. In Re claim 6, Hewlett teaches the use of straw blocks but is silent as to the use of restraining devices. It is however well known to use a restraining device adapted to provide additional support to the first and second walls in connection with straw as taught by the Webpage. It therefore would have been obvious to one skilled in the art at the time of the invention to modify the blocks of Hewlett to include a restraining device as taught by the Webpage in order to provide support to the block.



15. **Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hewlett (US 1,604,097).** In Re claim 9, Column 3 of Hewlett teaches a variety of block sizes but do not disclose a block with a length of about 24 inches, a width of about 12 inches and a height of about 12 inches and weighs about 40 to 55 lbs. The Federal Circuit has held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP 2144.04. Here, the fact the blocks are of a specific dimension different than that of Hewlett does not render claim 9 nonobvious. It therefore would have been obvious to one skilled in the art at the time of the invention to make the block larger in order to require fewer blocks to construct a wall.

16. **Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Webpage.** In Re claim 12, Column 3 of the Webpage teaches a variety of block sizes but do not disclose a block with a length of about 24 inches, a width of about 12 inches and a height of about 12 inches and weighs about 40 to 55 lbs. The Federal Circuit has held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device

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was not patentably distinct from the prior art device. MPEP 2144.04. Here, the fact the blocks are of a specific dimension different than that of Hewlett does not render nonobvious. It therefore would have been obvious to one skilled in the art at the time of the invention to make the block larger in order to require fewer blocks to construct a wall.

17. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webpage publication in view of Hewlett (US 1,604,097).

18. In Re claim 13, the Webpage publication has been discussed above and fails to teach a block including one or more through-holes extending between the one or more sidewalls adapted to receive a rebar, grout tube or both. Figures 2 and 5 of Hewlett teach a block including one or more through-holes extending between the one or more sidewalls adapted to receive a rebar, grout tube or both. It would have been obvious to one skilled in the art at the time of the invention to modify the blocks of the Webpage with the holes as taught by Hewlett in order to provide a means to add extra support for the blocks.

19. In Re claim 14, Column 2 Lines 57-63 and Column 2 Lines 85-96 of Hewlett disclose a binder and a moisture inhibitor in contact with the stalks.

Conclusion

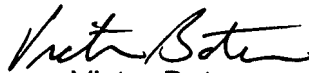
Prior art made of record but not relied upon is considered pertinent to applicant's disclosure includes Maxwell (US 5,729,936). Any inquiry concerning this communication or earlier communications from the examiner should be directed to

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Anthony N. Bartosik whose telephone number is 2723600. The examiner can normally be reached on M-F 7:30-5:00; Alter Fri Off E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Batson Victor can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor Batson
Supervisory Patent Examiner
Art Unit 3600

AB
7/2007